

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-54**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to the repair or storage of railroad rolling stock in Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is a new limited liability company located in Tennessee. About twenty-three miles of railroad track are on the taxpayer's premises. The taxpayer's business will include performing repair services on railroad rolling stock. It is anticipated that most of the customers will be leasing companies which own railroad rolling stock and lease such equipment to operating railroad companies. Some customers may be railroad companies. The taxpayer will receive the railroad cars from all across the United States and will service all types of railroad cars, with the exception at the present time of tank cars. All railroad cars that will be serviced by the taxpayer are involved in interstate commerce at least 51% of the time.

In addition to the repair service, the taxpayer will provide storage of excess railroad cars for leasing companies. When a lease ends, the leasing company needs a place to store the cars until they can be leased to another customer. The taxpayer will furnish storage for these railroad cars on its railroad tracks for a fee. It is anticipated that many cars will come for storage on which no repairs will be made.

QUESTIONS

1. Will Tennessee sales or use tax apply to the labor or parts used by the taxpayer in the repair of railroad rolling stock used principally in interstate commerce?
2. Will Tennessee sales or use tax apply to the fees charged by the taxpayer for storing railroad rolling stock on railroad tracks in Tennessee?

RULINGS

1. No. Repair service labor performed with respect to railroad rolling stock used principally in interstate commerce is exempt from sales and use tax in Tennessee. Repair parts used in servicing railroad rolling stock used in interstate commerce is exempt from sales and use tax in Tennessee.
2. No. Storage of railroad rolling stock on railroad tracks is not subject to sales or use tax in Tennessee.

ANALYSIS

1. TENN. CODE ANN. § 67-6-205 levies a tax on the gross charge for all services taxable under the Retailers' Sales and Tax Act. The repair of tangible personal property is a specifically taxable service in Tennessee. TENN. CODE ANN. § 67-6-102(24)(F)(iv). However, a specific exemption from tax applies to the repair of railroad rolling stock:

(g)(1) There is exempt from the sales and use tax all repair service labor performed with respect to railroad rolling stock, where the repair

services on such railroad rolling stock are initiated, performed or completed in repair facilities located within the state of Tennessee.

(2) As used in this subsection:

(A) "Railroad rolling stock" means all railroad equipment, operating on flanged wheels, which is currently being used, or is reasonably intended to be used, principally in interstate commerce; and

(B) "Repair service labor" means labor performed with respect to the repair, maintenance, overhauling, rebuilding, modifying or adapting of railroad rolling stock, together with any test or inspection necessary or appropriate thereto. Such exemption does not apply to repair service labor performed by non-Class 1 railroad companies on Class 1 railroad rolling stock.

TENN. CODE ANN. § 67-6-313(g).

Under the facts provided, the taxpayer plans to repair railroad rolling stock which is principally used in interstate commerce. The Department utilizes a 51% test to determine if an item is principally used for a particular purpose. See *Tennessee Farmers' Coop. v. State*, 736 S.W.2d 87 (1987). The facts provide that all railroad cars repaired by the taxpayer will be used in interstate commerce at least 51% of the time. In addition, the taxpayer is not a railroad company and therefore is not a non-Class 1 railroad company under the statute.¹ Accordingly, the taxpayer's repair service labor will be exempt from Tennessee sales and use tax.²

A separate statutory exemption applies to parts used in servicing railroad cars:

(b) There is exempt from the sales and use tax, the sales, use, storage or consumption of parts and accessories, material and supplies used in servicing and/or maintaining railroad rolling stock which is currently being used, or is reasonably intended to be used, in interstate commerce. Such exemption does not apply to fuel or other petroleum products or to shop equipment and tools.

TENN. CODE ANN. § 67-6-321(b). As noted above, the taxpayer will perform repair services on railroad rolling stock which is used in interstate commerce. Therefore, the repair parts will be exempt from Tennessee sales and use tax.

¹ Class I, II, and III railroad companies are defined in 49 C.F.R. §1201.1-1 based on the carrier's level of annual operating revenue.

² The use tax formerly levied on services was repealed effective July 1, 1992. 1992 Tenn. Pub. Acts 913, ' 8.

2. The taxpayer also will provide storage of railroad rolling stock for leasing companies. Clearly, storage is a service. Services performed in Tennessee are taxable only if they are performed as part of a taxable sale of tangible personal property or are specifically listed as a taxable service in the Tennessee Code. TENN. CODE ANN. §§ 67-6-102(26); 67-6-102(24)(A) and (F). Under the facts provided, the taxpayer will not be engaged in making taxable sales of tangible personal property. Therefore, the taxpayer's storage service will be subject to tax only if it is specifically listed in the Code as a taxable service. Under TENN. CODE ANN. § 67-6-102(24)(F), the following services are subject to tax in Tennessee:

- (i) The sale, rental, or charges for any rooms lodgings or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp . . .
- (ii) Charges for services rendered by persons operating or conducting a garage, parking lot, or other place of business for the purpose of parking or storing motor vehicles . . .
- (iii) The furnishing, for a consideration, of either intrastate or interstate telecommunication services . . .
- (iv) The performing for a consideration of any repair services . . .
- (v) The laundering or dry cleaning of any kind of tangible personal property . . .
- (vi) The installing of tangible personal property which remains tangible personal property after installation . . .
- (vii) The enriching of uranium materials . . .
- (viii) The renting or providing of space to a dealer or vendor without a permanent location in this state . . .
- (ix) Charges for warranty or service contracts . . .

Storage of tangible personal property is not listed as a taxable service except with respect to motor vehicles under TENN. CODE ANN. § 67-6-102(24)(F)(ii).

The term "motor vehicle" is not defined in the sales and use tax statutes. However, it is defined elsewhere within the Tennessee Code. Specifically, under the Tennessee Motor Vehicle Title and Registration Law "motor vehicle" is defined as a vehicle which is self-propelled, and the term "vehicle" specifically excludes any device "used exclusively upon stationary rails or tracks." TENN. CODE ANN. § 55-1-103(3) and (5). Similarly, the Motor Vehicle Storage Act of 1980 defines "motor vehicle" as any self-propelled vehicle which is designed for use upon the highway. TENN. CODE ANN. § 55-23-102(1). Finally, Title 65, Chapter 15 of the Code, which governs the regulation of motor carriers, defines "motor vehicle" as "any automobile, automobile truck, motor bus, truck bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks." TENN. CODE ANN. § 65-15-102(7).

Under these definitions, railroad cars are not motor vehicles. Consequently, the taxpayer's storage of railroad cars will not be subject to sales or use tax in Tennessee.

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APPROVED: Ruth E. Johnson, Commissioner

DATE: 12-22-98